IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Patent Application No. 09/900,674

Conf. No. 6698

Applicant: Nyhan, et al.

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Examiner: Boyce, Andre D.

Docket No.: 211367

Customer No.: 23460

APPELLANTS' APPEAL BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In support of the Notice of Appeal filed by Appellants on February 22, 2011, Appellants now submit their Brief.

Real Party In Interest

The patent application that is the subject of this appeal is assigned to Dynamic Logic, Inc.

Related Appeals and Interferences

There are no appeals or interferences that are related to this appeal.

Status of Claims

Claims 1, 3, 5-17, 21-24 and 26-33 are presently pending in this application.

Claims 2, 4, 18-20, and 25 were previously canceled.

Claims 1, 3, 5-7, 9-17, 21 and 26-33 stand finally rejected, and these rejections are presently being appealed.

Claims 8 and 22-24 are objected to as depending from a rejected base claim, but are otherwise allowable.

A complete listing of these claims appears in the Claims Appendix.

Status of Amendments

There were no amendments submitted after the final rejection.

Summary of Claimed Subject Matter

Claims 1, 3, 5-17, 21-24, and 26-33 are pending. The summaries of the identified claims reference the specification and drawings of Nyhan et al., U.S. App. Serial No. 11/004,074 filed on December 3, 2004.

Appellants' invention, recited in independent claims 1, 13 and 17, is directed to a method for conducting an on-line survey presentation process. The *survey solicitation* (distinguished from the actual survey presentation) aspect of the survey presentation process is driven by additional executable instructions inserted into on-line ad blocks received, by a user computer, from an ad server in association with processing a previously received web page. The recited steps facilitate tuning a survey *solicitation* process, through additional instructions contained within blocks of data downloaded from ad servers separately from web pages (containing references to the downloaded ads), to ensure that a sufficient number of surveys are completed within a needed time frame while also avoiding excessive repeated presentation of on-line survey *solicitations* on a same user computer.

Turning to **claim 1**, the claimed method is directed to conducting an on-line survey in association with presentation of an on-line advertisement by a browser client (*see*, FIG. 2, browser 26, and page 7, lines 8-12). The sequence of recited steps begins with receiving a web page containing an on-line advertisement by a user computer including the browser client. *See*, FIG. 1, Step B, page 4, lines 26-31.

Thereafter, the claimed method proceeds through a request/response transaction between the user computer and an ad server. More particularly, the user computer, in association with processing the received web page, issues a request to the ad server for a block of data comprising executable instructions for presenting an on-line advertisement via the browser client. *See*, FIG. 1, Step C, page 4, line 29 to page 5, line 6.

The ad server thereafter sends the requested block of data. *See*, FIG. 1, Step H, page 5, lines 22-25. The advertisement data block includes, in addition to instructions for displaying an on-line ad, additional computer-readable instructions that carry out a decision-making process for determining whether to present an on-line survey *solicitation* via a browser client on the user computer. *See*, FIG. 1, Step H, page 5, lines 22-25. Acceptance of the on-line survey solicitation by the user results in presentation of an on-line survey via the browser client. *See*, FIG. 1, Step K, page 6, lines 15-19; and page 11, lines 17-19.

During the recited "accessing" step, a timestamp on the user computer is accessed. The timestamp is indicative of a period of time that has passed since the on-line survey solicitation was previously presented by the browser client. *See*, FIG. 1, Step E, page 5, lines 9-11 and lines 19-21.

Continuing with the recited steps of claim 1, according to the last recited step if the time stamp indicates passage of at least a prescribed wait period between consecutive presentations of on-line survey *solicitations*, then the "additional computer-readable instructions" (see the "providing" step described above) are executed to determine whether to present an on-line survey solicitation. The "additional computer-readable instructions" in the illustrative example include a random number generator that renders a number used to determine whether to issue the survey solicitation to the current user of the computer 10. *See*, FIG. 1, Step I, page 5, line 25 to page 6, line 2.

The method recited in claim 1 thus includes at least a second decision making step facilitated by the "additional computer-readable instructions" contained in the block of data provided by the ad server during the "providing" step. The second decision making step occurs *after* first establishing that a "timestamp value indicates passage of a period of time ... between consecutive presentations of the on-line survey solicitation."

Dependent **claim 6** recites three additional steps. The first step recites presenting the on-line survey solicitation thereby soliciting the user to take the on-line survey. *See*, FIG. 1, step J, page 6, lines 13-18. The second step recites generating, in association with the presenting step, cookie data including the timestamp value to indicate that the on-line survey solicitation was presented by the browser client. *See*, FIG. 4, steps 134 and 136, and page 10, lines 11-15. The third step recites sending the generated cookie data over a computer network to the browser client. *See, Id.*

Dependent **claim 7** recited the following additional two steps relating to executing the additional computer-readable instructions. The first additional step recites referencing a frequency parameter that influences the frequency of presenting the on-line survey solicitations. *See*, FIG. 1, step I, page 6, lines 3-15. The second additional step recites determining whether or not to present the on-line survey solicitation via the browser client based, in part, on the frequency parameter. *See, Id.*

Dependent **claim 11** recites the following additional steps. The first additional step recites presenting the on-line survey solicitation as a pop-up window. *See*, FIG. 4, step 144, and page 10, lines 24-29. Claim 11 further recites the further step of, in response to activation of a link within the pop-up window, sending the on-line survey in the form of a web page to the browser client, the on-line survey comprising questions regarding a product or service advertised in the on-line advertisement. *See*, page 11, line 22 to page 12, line 16.

Independent **claim 13** is similar to method claim 1. However, the initial "receiving" step is described in terms of an action performed by an *advertisement server* (e.g., ad server 14 of FIG. 1) in contrast to the "receiving" and "issuing" steps recited in **claim 1** that are performed by a user computer. In particular, claim 13 is directed to a method for soliciting a user of a user computer (FIG. 1, computer 10) to take an on-line survey. The user computer is linked to a computer network (FIG. 1, network 18) and running a browser program (FIG. 2, browser 26). The recited method includes the step of receiving, by an advertisement server, a request issued by the browser for one or more files comprising an on-line advertisement. *See*, FIG. 1, Step C, page 4, line 26 to page 5, line 6.

Thereafter, the advertisement server sends, to the user computer in response to the request issued by the browser, the one or more files comprising the on-line advertisement, and in

addition include further computer-readable instructions that facilitate decision-making steps for determining whether to present an on-line survey solicitation via the browser. *See*, FIG. 1, Step H, page 5, lines 22-25. Acceptance of the on-line survey solicitation by the user results in presentation of an on-line survey via the browser client. *See*, FIG. 1, Step K, page 6, lines 15-19; and page 11, lines 17-19.

The claimed method further comprises the step of accessing, on the user computer, cookie data for the browser. The cookie data includes a timestamp regarding previous presentation by the browser of the on-line survey solicitation. FIG. 1, Step E, page 5, lines 9-11 and lines 19-21).

The recited method further includes the step of executing the *further computer-readable instructions if the timestamp value indicates passage of a period of time* satisfying a prescribed wait period *between consecutive solicitations* on the user computer to take the on-line survey. The "additional computer-readable instructions" in the illustrative example include a random number generator that renders a number used to determine whether to issue the survey solicitation to the current user of the computer 10. *See*, FIG. 1, Step I, page 5, line 25 to page 6, line 2.

Dependent **claim 15** recited the additional steps of: (1) displaying the on-line advertisement (*see*, FIG. 1, page 5, lines 27-28), and (2) deciding whether or not to solicit the user to take the on-line survey based on a frequency parameter, the frequency parameter being indicative of a probability that, in response to the selectively modifying step, the on-line survey solicitation will be submitted for presentation by the browser. *See*, FIG. 1, step I, page 6, lines 3-15.

Independent **claim 17** is directed to a system including a set of components for carrying out the steps recited in claims 1 and 13. Claim 17 recites a system for conducting an on-line survey. The claimed system includes a client computer for interacting with a user. *See, e.g.,* FIG. 1, Computer 10 and User 8, and page 4, lines 4-5. The system also includes a web server in communication with the client computer. *See*, FIG. 1, Web Server 12, page 4, line 5. The system also includes an advertisement server which supplies advertisement blocks in response to request instructions embedded in Web pages downloaded from the Web server. *See*, FIG. 1, Ad Server

14, page 4, lines 5-6. The system also includes a survey logic server in communication with the client computer. *See*, FIG. 1, Survey logic server 16, page 4, lines 6-7.

The claimed system also includes computer-readable instructions executed on the above-mentioned networked computers for performing a set of steps. The recited steps include requesting a web page to be sent from the web server to the client computer, the web page including a reference to an on-line advertisement to be presented on the client computer. *See*, FIG. 1, Step A, page 4, lines 24-26. The instructions also facilitate requesting, by the client computer, the on-line advertisement from the advertisement server for presentation on the client computer. FIG. 1, Step C, page 5, lines 3-5. The instructions also facilitate sending an on-line survey solicitation associated with the on-line advertisement *from the survey logic server* to the client computer based at least in part on a stored timestamp value on the client computer indicative of a period of time that has passed since a previous presentation of the on-line survey solicitation on the client computer. *See*, FIG. 1, Step E, page 5, lines 9-11 and lines 19-21); FIG. 1, Step I, page 5, line 25 to page 6, line 2; and FIG. 1, Step J, page 6, lines 3-19. Acceptance of the on-line survey solicitation by the user results in presentation of an on-line survey via the browser client. *See*, FIG. 1, Step K, page 6, lines 15-19; and page 11, lines 17-19.

Dependent **claim 32** recites that a random number generated by the user computer is appended to a URL used by a browser on the user computer to contact the survey logic server. *See*, page 10, lines 2-10.

Grounds of Rejection to be reviewed on Appeal

The grounds of rejection to be reviewed on appeal are the grounds stated in the Final Office Action mailed on August 24, 2007.

1. Claims 1, 3, 5-7, 11-17, 26-27, and 33 are rejected as obvious under 35 U.S.C. §103(a) over Smith et al. U.S. Pub. App. 2002/0128898 (Smith) in view of de Ment U.S. Pat. No. 6,728,755 (de Ment).

2. Claims 9-10, 21 and 28-32 are rejected as obvious under 35 U.S.C. §103(a) over Smith in view of de Ment and Winn U.S. Pat. No. 6,901,424 (Winn).

Argument

The Final Office Action's rejection of each of the presently pending claims is premised upon misapplication of prior art teachings and impermissible excessive reliance on hindsight to support modification of the system disclosed in the primary reference. The combined teachings of the prior art upon which the Final Office Action relies do not disclose *each of the elements* recited within the independent claims and cannot be combined in a way that would render Appellants' claimed invention. The Final Office Action has thus not established a *prima facie* case of obviousness with respect to the presently pending independent claims, and the current rejections should be reversed.

Appellants note that the teachings of Smith differ fundamentally from the presently claimed invention. In particular, the claimed invention is directed to avoiding excessive presentation of *solicitations to take an on-line survey*. Appellants', responding to the Board's Decision, amended each of the presently pending independent claims to explicitly distinguish an "on-line survey solicitation" from a subsequently presented "on-line survey" (in the event a user accepts the on-line survey solicitation's invitation to take a survey). The prior art upon which the Final Office Action relies unequivocally discloses recording previously presented *surveys* as opposed to Appellants' recited *survey solicitations*. The element of a "timestamp value indicative of a period of time that has passed since the on-line survey solication was previously presented," recited (with minor language variations) in each of the presently pending independent claims, is not disclosed in the prior art references. Smith, upon which the Final Office Action primarily relies, discloses a system for selecting a particular survey for presentation to a user – including use of cookie data identifying *previously completed surveys* to avoid presenting a same survey to a user multiple times. Smith, in contrast to Appellants' claimed invention, provides a mechanism to prevent a user from *taking a survey multiple times*. Smith does not suggest using a timestamp corresponding to a last *presentation of a survey solitication*.

Moreover, the Final Office Action improperly relies on the reason (for declaring claims obvious) of "the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separaetly, and one of ordinary skill in the art would have recognized that the results of the combination were predictable." This conclusory statement is not a suitable basis (i.e., reason) for declaring the

presently pending claims obvious where there is no indication of any need in the prior art references for the proposed combination. In virtually each instance where this "reason" is used in the Final Office Action, the result achieved by Appellants' claimed invention is not contemplated by the prior art. Such rejections impermissibly rely on "hindsight" to support an obviousness-based rejection.

For the reasons presented herein, the combined teachings of Smith, de Ment, and Winn do not render any of the claims obvious.

1. Rejection of Claims 1, 3, 5-7, 11-17, 26-27 and 33 As Obvious Over Smith in View of de Ment

Claims 1, 3, 5, 12, 13, 14, 16, 26, 27, and 33

Appellants request reversal of the final rejection of **claim 1** as obvious over Smith in view of de Ment. The combined disclosures of Smith and de Ment cannot support a *prima facie* case of obviousness over the presently pending independent claim 1 since a number of the recited elements of claim 1 are simply not present. Such missing elements include: (1) issuing, by the user computer ..., a request to an ad server, for a block of data comprising computer-readable instructions for presenting the on-line advertisement via the browser client; (2) providing, by the ad server, a block of data including instructions facilitating decision-making with regard to whether an *on-line survey solicitation* is presented; (3) accessing a timestamp indicating a time period that has passed since *an online survey solicitation was* presented; and (4) executing the *additional computer-readable instructions*, if the time stamp indicates sufficient time has passed since a last *survey solicitation*, to determine whether to present the on-line survey solicitation via the browser. These points of distinction were overlooked by the Final Office Action and form a basis for the present appeal.

a. Neither Smith nor de Ment discloses the recited "issuing" step

Appellants' claimed "issuing" step is recited as follows:

> "issuing, by the user computer in association with processing the received web page, a request to an ad server, for a block of data comprising computer-readable instructions for presenting the on-line advertisement via the browser"

The "issuing" step (corresponding to Step C in FIG. 1 of Appellant's application) arises from the user computer processing a received web page and includes sending a request to an ad server. More particularly, the claimed "issuing" step relates to actions taken by the user computer to obtain a block of data from an ad server comprising instructions for presenting an *on-line advertisement* via the user computer's browser.

The Final Office Action admits at page 3, lines 9-12, Smith does not disclose a user computer issuing a request to an ad server in association with processing a previously received web page. Instead, Smith, at paragraphs 54-55, 58, 118, 122-125, and 145-146 (cited in the Final Office action) discloses banner ads delivered within the initially downloaded web page. Appellants' interpretation of Smith is bolstered by paragraph [0130] of Smith describing the need to remove the banner from web pages when the survey period ends. In Smith, the banners downloaded in the *initially provided web pages* contain the links to surveys. *See also*, Smith, paragraph [0058].

However, the Final Office Action does not identify a teaching of Appellants' specifically claimed "issuing" step in de Ment. At the bottom of page 3, the Final Office Action refers to de Ment's commencement of a pop-up survey routine in response to a user invoking a web tool corresponding to "any action" desired by a designer. The Final Office Action has thus relied upon de Ment's general statement of "any action" to support the specific on-line advertisement delivery mechanism recited in Appellants' "issuing" step. **Moreover, Appellants' claimed "issuing" step is directed to how an on-line ad block is initially requested, not how a pop-up survey routine is commenced (as described in cols. 3, 11 and 10-14 of de Ment cited in the Final Office Action).**

b. Neither Smith nor de Ment discloses the recited "sending" step

Appellants' claimed "sending" step is recited as follows:

> "sending, by the ad server in response to the issued request from the user
> computer, the block of data including computer-readable instructions for
> presenting the on-line advertisement and the block of data further including
> additional computer-readable instructions that facilitate decision-making steps
> for determining whether to present an on-line survey solicitation via the browser
> client, wherein acceptance of the on-line survey solicitation by the user results in
> presentation of an on-line survey via the browser client"

The Final Office Action, at page 3, lines 3-5, states that the "wherein" clause at the end of the "sending" step is disclosed at paragraph [0124] of Smith that describes banner ads that, when selected by a user, cause a survey to be presented. However, the Final Office Action expressly admits at page 3, lines 12-17, that Smith does not disclose the preceding parts of the recited sending step. Appellants submit that the "sending" step is also not present in de Ment.

Appellants first note that the "sending" step is performed by the ad server in response to the "issuing" step that, as explained above, is not described in either Smith or de Ment. For at least this reason alone, the "sending" step is not disclosed by either Smith or de Ment. The Final Office Action's discussion of the "sending" step, at page 3, last line, to page 4, line 13, focuses entirely on de Ment's description of a pop-up survey decision process (i.e., the latter part of the recited "sending" step. However, the Final Office Action does not identify the specifically recited delivery mechanism for the "additional computer-readable instructions that facilitate decision-making steps."

Moreover, Appellants' decision-making process relates to determining whether to present an "on-line survey solicitation" wherein "acceptance of the on-line survey solicitation by the user results in presentation of an on-line survey." The "sending" step recites additional computer-readable instructions are contained within the block of data provided by the ad server that facilitate decision-making steps for determining *whether to present* an on-line survey *solicitation* (emphasis added). Thus, the block of data downloaded from the ad server includes instructions for determining whether to present a user with an invitation to take a survey (not the survey itself). Appellants' disclosure (*see,* Fig. 1, Steps J and K and associated written description), and most recent claim amendments, unequivocally distinguishes between a solicitation to take a survey and presenting the survey in response to a user's affirmative response to the on-line solicitation.

The Final Office Action admits that Smith does not disclose the claimed "decision-making steps" for determining whether to present an on-line survey solicitation. The Final Office Action, at page 4, lines 1-13, attempted to apply de Ment's steps performed to determine whether a *survey* has been presented to the user in the past six months to determine whether to present the *survey* to the user. Appellants thus note again that de Ment and Smith both concern decision-

making relating to presentation of a particular *survey* and not a *survey solicitation*. Neither Smith nor de Ment discloses Appellants' claimed steps for "determining whether to present an on-line survey solicitation."

Finally, it would not have been obvious to modify Smith in view of de Ment, since Smith does not express any need to limit the quantity/frequency of survey solicitations presented to users. Smith, in contrast to the aforementioned claim elements relating to presenting a *solicitation to take a survey*, discloses determining *which survey* a user will be presented. The banner ad containing the survey solicitation is downloaded without regard to any previous exposure by the current user to previous solicitations to take a survey. The Final Office Action has thus identified portions of Smith relating to *selecting a particular survey* rather than determining *whether to present an on-line survey solicitation via the browser client*. Therefore, for this additional reason Smith would not have been modified in view of de Ment's teachings to incorporate the recited "sending" step.

   c. Smith, in combination with de Ment, does not disclose the recited "accessing" step

Appellants' claimed "accessing" step is recited as follows:

> "accessing, on the user computer, a timestamp value indicative of a period
> of time that has passed since the on-line survey solicitation was previously
> presented by the browser client"

The "accessing" step recites the additional action of reading a timestamp value to determine a period of time that has passed since a user was last *solicited to take a survey*. The accessing step thus ensures that an unwilling user will not receive repeated *solicitations to take a survey*.

The Final Office Action, at page 5, lines 6-14, admits that Smith does not disclose the claimed "accessing" step wherein a timestamp value, stored on the user computer, is accessed that is indicative of a period of time that has passed since the on-line survey solicitation was previously presented by the browser client.

The Final Office Action, at page 5, line 15, to page 7, line 7, describes, and then applies de Ment's disclosure of a timestamp (for a presented survey) to Smith's survey presentation

method. Appellants initially note that de Ment tracks when a *survey* was last taken by a user --
not (as claimed) when a *survey solicitation* was last presented. If anything, the combination of
Smith and de Ment results in a system where timestamps are used to enforce a minimum wait
period between *taking a survey*.

Furthermore, there is no reason to modify Smith in view of de Ment such that Smith
would include Appellants' recited "accessing" step. Smith discloses reading a cookie to
determine whether a user has *taken a survey*. Smith is directed to preventing users from taking
multiple surveys of a same type. Thus, it is not necessary (or even desirable) for a *timestamp*
(such as de Ment's) to be used in association with Smith's presentation of a *survey*. It is unlikely
that the survey administrator, operating in Smith's survey presentation system, would *ever* want a
user to take a particular survey more than one time. Therefore, a *timestamp*, disclosed in de
Ment, would not be considered useful in Smith's on-line survey presentation method because
merely noting the survey was taken is sufficient to prevent users from taking a survey multiple
times. For this additional reason the combined teachings of Smith and de Ment do not render the
claimed invention obvious.

> *d. Smith, in combination with de Ment, does not disclose the recited "executing the*
> *additional ... instructions" step*

Appellants' claimed "executing" step is recited as follows:

> "executing the additional computer-readable instructions if the timestamp
> value indicates passage of a period of time satisfying a prescribed wait period
> between consecutive presentations of the on-line survey solicitation by the
> browser client on the user computer"

Appellants claimed "additional computer-readable instructions" are embedded within a
downloaded *block of data from an ad server* and "facilitate decision-making steps for
determining whether to present an on-line survey solicitation via the browser client." The
"executing" step, taken in combination with the previously recited "issuing", "sending", and
"accessing" steps, requires: (1) downloading, within an ad data block from an ad server,
additional instructions for determining *whether* to present an *on-line survey solicitation*, and (2)
executing the additional instructions if a timestamp accessed on the user computer indicates a
sufficient period of time has passed since a previous *on-line survey solicitation*.

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The Final Office Action admits at page 5, lines 11-14, that Smith does not disclose Appellants' claimed "executing" step. Thereafter, the Final Office Action seeks to identify portions of de Ment corresponding to the claimed "executing" step and then justify the combination of Smith and de Ment. However, the Final Office Action does not identify any teaching in de Ment that corresponds to the recited timestamp identifying a period of time that has passed since an "on-line survey solicitation" which Appellants' claim 1 now specifically distinguishes from a later presented "on-line survey." De Ment instead measures a time period since a last *survey* was presented to a user.

Moreover, de Ment's "decision step 216" does not lead to execution of additional instructions embedded within a *data block downloaded from an ad server*. In fact, neither Smith nor de Ment discloses such instructions being downloaded in a data block from an ad server. **In the event the rejection is not withdrawn/reversed, Appellants specifically request identification of a teaching within either Smith or de Ment that such additional instructions are downloaded *in a data block from an ad server*.**

Appellants have identified several elements of **claim 1** that are simply not disclosed in either Smith or de Ment. Furthermore, the Final Office Action does not present a reasonable motivation for one skilled in the art to modify Smith to include a timestamp (indicating the last time a user participated in a survey) since Smith does not indicate any desirability in having users retake a survey (and in fact discloses just the opposite). The rejection of **claim 1** as obvious over Smith in view of de Ment should be reversed.

Appellants seek reversal of the other independent and dependent claims grouped with claim 1 (including each of the independent claims) in this section for at least the reasons recited for claim 1.

Claim 6

Appellants specifically seek reversal of the rejection of **claim 6**. Both Smith and de Ment record actual completions of surveys. Neither Smith nor de Ment discloses storing a cookie indicating that *a survey solicitation* was presented on the user computer. Smith and de Ment disclose systems that prevent a user from taking the same survey multiple times, but neither

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reference discloses a need to limit repeated *solicitations to take a survey* or address such need by recording a timestamp indicating when a user was previously solicited to take a survey. Instead, when a user declines an invitation to take a survey (step 230, "NO" option) the method passes directly to the Web tool step without registering the *survey solicitation* event. *See,* de Ment, column 3, lines 38-41. Moreover, Appellants, for the reasons stated herein above with regard to claim 1, submit that Smith does not have any need for a timestamp indicating when a *survey was last taken by a user* (since Smith's system dictates that each survey is only taken once).

Claims 7 and 15

Appellants specifically seek reversal of the rejection of **claims 7 and 15**. Claims 7 and 15 recite elements relating to "on-line survey solicitations" which are different from actual "surveys" completed by users. Smith's disclosure is unequivocally directed to tracking "surveys" taken and not "survey solicitations" issued to a user. Appellants furthermore note that paragraphs [0129-0130] of Smith disclose limiting a "quantity" of surveys taken by a particular user rather than a "frequency" (how often) with which solicitations are presented to a particular user computer. De Ment only stores timestamps for "completed surveys." There is no way for de Ment to track previously presented, but declined, presentations of survey solicitations. As such, there is no way for de Ment to control the frequency of survey solicitations.

Claim 11

Appellants specifically seek reversal of the rejection of **claim 11**. Neither Smith nor de Ment discloses linking the survey questions to a product or service advertised in the on-line advertisement provided in the block of data downloaded from the ad server. The portions of de Ment referenced in the Final Office Action (*see,* page 10, last paragraph) neither discloses nor suggests the survey questions are linked to an *on-line advertisement* contained within the previously provided block of data from the ad server. The Final Office Action has not identified any part of Smith of de Ment's disclosure relating to the claimed "on-line advertisement."

Claim 17

Appellants specifically seek reversal of the rejection of **claim 17**. The rejection of claim 1 did not distinguish between:

(1) *initially downloaded web pages,* and

(2) a subsequent request for an ad block by a user computer from an advertisement server.

In the event the rejection of claim 17 is not withdrawn/reversed Appellants specifically request: (1) identification of the recited advertisement server, and (2) application of Smith and de Ment to the recited requesting and sending steps.

2. Rejection of Claims 9-10, 21 and 28-32 As Obvious Over Smith in View of de Ment and Winn

Claims 9-10, 21 and 28-31

Appellants request reversal of the final rejection of **claim 9** as obvious over Smith in view of de Ment and Winn. The Final Office Action does not identify any teaching in any of the three cited references directed to Appellants claimed element of changing a frequency parameter in accordance with an amount of time remaining in a campaign. *See,* claim 9. The Final Office Action states, without confirmation in the teachings of the prior art, that changing the frequency in response to the amount of time remaining in a campaign "is merely a combination of old elements...." *See,* Final Office Action, page 14, lines 15-19. Appellants submit there are many ways to ensure that a sufficient number of surveys are taken (increasing ads linked to surveys, expanding survey time frames, calculating a higher frequency value from the beginning, relaxing stringency of candidate selections, increasing values of rewards for taking a survey, etc.).

The Final Office Action has not provided a single reference supporting its bald assertion at page 14, that Appellants' claimed time-based frequency determination is no more than a mere combination of old elements. Appellants submit that the time-based frequency parameter determination does not necessarily improve performance of the system. Rather, such adjustment potentially leads to an undesirably high frequency value arising from a need to meet a specific campaign deadline. There are many factors that can potentially be used to dynamically specify the frequency parameter. The rejection of claim 9 is instead the product of a hindsight deconstruction of Appellants' claimed invention.

Claim 32

Appellants specifically seek reversal of the rejection of claim 32 as obvious over Smith in view of de Ment, Winn and Official Notice. URLs are indeed well known. However, nowhere in the cited references is there a suggestion to append the randomly generated value to the URL address identifying the location of the sender of a survey request to the survey logic server that ultimately determines whether to provide the survey to the requesting user computer. The Final Office Action merely states that appending a random number to the sender's URL is "merely a combination of old elements...." However, the Final Office Action does not provide any reason why such combination would have been desired in Smith's modified system. In fact, there does not appear to be any useful purpose for appending such random number to a user request for a survey solicitation. The rejection of claim 32 is another case of using impermissible hindsight to guide a determination of "obviousness". **Appellants request identification of a reference in support of this rejection in the event the rejection of claim 32 is not withdrawn/reversed.**

Conclusion

The claimed invention facilitates resubmitting, to a user computer, an invitation to take a survey assuming a sufficient amount of time has passed since a previous *solicitation to take a survey*. Appellants have identified substantial differences between the invention recited in independent claims 1, 13 and 17 and the disclosure of the references cited in the Final Office Action. Thus, Appellants request withdrawal/reversal of the obviousness rejection of each of the presently pending claims.

Respectfully submitted,

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Claims Appendix

1. (Previously presented) A method for conducting an on-line survey in association with presentation of an on-line advertisement by a browser client, the method comprising:

receiving, by a user computer hosting the browser client, a web page configured to display an on-line advertisement;

issuing, by the user computer in association with processing the received web page, a request to an ad server, for a block of data comprising computer-readable instructions for presenting the on-line advertisement via the browser client;

sending, by the ad server in response to the issued request from the user computer, the block of data including computer-readable instructions for presenting the on-line advertisement and the block of data further including additional computer-readable instructions that facilitate decision-making steps for determining whether to present an on-line survey solicitation via the browser client, wherein acceptance of the on-line survey solicitation by the user results in presentation of an on-line survey via the browser client;

accessing, on the user computer, a timestamp value indicative of a period of time that has passed since the on-line survey solicitation was previously presented by the browser client; and

executing the additional computer-readable instructions if the timestamp value indicates passage of a period of time satisfying a prescribed wait period between consecutive presentations of the on-line survey solicitation by the browser client on the user computer.

2. (Canceled)

3. (Previously Presented) The method of claim 1, wherein the accessing step comprises receiving cookie data from the browser client indicative of a previous presentation of the on-line survey solicitation.

4. (Canceled)

5. (Previously presented) The method of claim 1, further comprising sending the block of data, including the additional computer-readable instructions, to the browser client over a computer network.

6. (Previously presented) The method of claim 1, further comprising:

presenting the on-line survey solicitation thereby soliciting the user to take the on-line survey,

generating, in association with the presenting step, cookie data including the timestamp value to indicate that the on-line survey solicitation was presented by the browser client; and

sending the generated cookie data over a computer network to the browser client.

7. (Previously presented) The method of claim 1, further comprising:

executing the additional computer-readable instructions to perform steps of:

referencing a frequency parameter that influences the frequency of presenting the on-line survey solicitations; and

determining whether or not to present the on-line survey solicitation via the browser client based, in part, on the frequency parameter.

8. (Previously Presented) The method of claim 7, wherein the on-line survey solicitation is presented as part of a campaign, wherein the frequency parameter has a value that is at least partially a function of an amount of time remaining in the campaign, the method further comprising calculating the value of the frequency parameter according to an algorithm that incorporates the amount of time remaining in the campaign.

9. (Previously Presented) The method of claim 7, wherein the on-line survey solicitation is presented as part of a campaign, wherein the frequency parameter has a value that is at least partially a function of an amount of time remaining in the campaign, the method further comprising determining the value of the frequency parameter by referencing a look-up table that correlates a plurality of possible times remaining in the campaign with corresponding possible frequency values.

10. (Previously presented) The method of claim 1, further comprising executing the additional computer-readable instructions to perform steps of:

generating a random number;

determining whether the random number falls within a set of numbers that correspond to a frequency with which the on-line survey solicitation is presented via browser clients; and

presenting the on-line survey solicitation based on the determining step.

11. (Previously presented) The method of claim 1, further comprising:

presenting the on-line survey solicitation as a pop-up window; and

in response to activation of a link within the pop-up window, sending the on-line survey in the form of a web page to the browser client, the on-line survey comprising questions regarding a product or service advertised in the on-line advertisement.

12. (Previously presented) The method of claim 1, further comprising:

presenting the on-line survey solicitation as a pop-up window; and

in response to activation of a link within the pop-up window, sending the on-line survey in the form of a web page to the browser client, the on-line survey comprising questions regarding a product or service that is not advertised in the on-line advertisement.

13. (Previously presented) A method for soliciting a user of a user computer to take an on-line survey, the user computer being linked to a computer network and running a browser program, the method comprising:

receiving, by an advertisement server, a request issued by the browser for one or more files comprising an on-line advertisement;

sending, by the advertisement server to the user computer in response to the request issued by the browser, the one or more files comprising the on-line advertisement and in addition including further computer-readable instructions that facilitate decision-making steps for determining whether to present an on-line survey solicitation via the browser, wherein acceptance of the on-line survey solicitation by the user results in presentation of an on-line survey via the browser;

accessing, on the user computer, cookie data for the browser including a timestamp regarding previous presentation by the browser of the on-line survey solicitation; and

executing the further computer-readable instructions if the timestamp value indicates passage of a period of time satisfying a prescribed wait period between consecutive solicitations on the user computer to take the on-line survey.

14. (Original) A computer-readable medium having stored thereon computer-readable instructions for performing the method of claim 13.

15. (Previously presented) The method of claim 13, wherein the one or more requested files comprise computer-readable instructions for displaying the on-line advertisement, and wherein the further computer-readable instructions call a routine that decides whether or not to solicit the user to take the on-line survey based on a frequency parameter, the frequency parameter being indicative of a probability that, in response to the selectively modifying step, the on-line survey solicitation will be submitted for presentation by the browser.

16. (Original) The method of claim 15, further comprising:

sending further script to the browser comprising instructions for displaying a pop-up window that, when clicked on by the user, causes the browser to download a web page that includes the on-line survey.

17. (Previously presented) A system for conducting an on-line survey, the system comprising:

a client computer for interacting with a user;

a web server in communication with the client computer;

an advertisement server;

a survey logic server in communication with the client computer; and

computer-readable instructions for:

requesting a web page to be sent from the web server to the client computer, the web page including a reference to an on-line advertisement to be presented on the client computer;

requesting, by the client computer the on-line advertisement from the advertisement server for presentation on the client computer; and

sending an on-line survey solicitation associated with the on-line advertisement from the survey logic server to the client computer based at least in part on a stored timestamp value on the client computer indicative of a period of time that has passed since a previous presentation of the on-line survey solicitation on the client computer, wherein acceptance of the on-line survey solicitation by the user results in presentation of an on-line survey on the client computer.

18. (Canceled)

19. (Canceled)

20. (Canceled)

21. (Previously presented) The system of claim 17, wherein the sending step comprises:

invoking a routine at the survey logic server that compares a random number to a set of values based on a frequency parameter to determine whether to send the on-line survey solicitation to the client computer.

22. (Previously Presented) The system of claim 21, wherein the on-line survey solicitation is presented as part of a campaign, and wherein a value of the frequency parameter is at least partially a function of elapsed time in the campaign.

23. (Previously presented) The system of claim 22, wherein the frequency parameter is determined according to an algorithm.

24. (Previously Presented) The system of claim 22, wherein the frequency parameter is determined by referencing a look-up table.

25. (Canceled)

26. (Previously presented) The system of claim 17, wherein the advertisement server adds first computer-readable instructions, for invoking a decision routine, to the advertisement data when consideration is to be given to sending the on-line survey solicitation to the computer.

27. (Previously Presented) The system of claim 26, wherein the survey logic server provides the first computer readable instructions to the ad server.

28. (Previously presented) The method of claim 1 wherein the decision-making steps comprise generating a random number on the user computer; and wherein the method further comprises:

applying a frequency parameter value to the random number to determine whether to present a survey invitation on the user computer.

29. (Previously presented) The method of claim 28 wherein the frequency parameter value is specified by a survey logic server.

30. (Previously presented) The method of claim 29 further comprising the step of changing the frequency parameter value during a survey campaign.

31. (Previously presented) The method of claim 29 wherein the executing step comprises providing the random number to the survey logic server, and wherein the survey logic server performs the applying step.

32. (Previously presented) The method of claim 31 wherein the random number is appended to a URL used by a browser on the user computer to contact the survey logic server.

33. (Previously presented) The method of claim 1 wherein the prescribed wait period is specified by a survey logic server.

Evidence Appendix

Not applicable.

Related Proceedings Appendix

Not applicable.